

## REMARKS/ARGUMENTS

Claims 1 – 39 remain in the application. Claims 1, 12, 27 and 29 have been amended. Claims 5 and 20 – 26 are withdrawn from consideration.

Applicants appreciate the courtesies extended to applicants' attorney in the telephone interview with the Examiner on December 14, 2007. Claims 1 and 27 have been amended as discussed in the course of the interview. Claims 12 and 29 are rewritten in independent form including all of the limitations of the base claim and any intervening claims and are therefore allowable. Applicants' attorney discussed the proposed amendments to claims 1 and 27 and submitted that the proposed amendments responded to the Examiner's Response to Arguments in the Office Action dated November 1, 2007 and discussions with the Examiner in the course of the interview. Applicants' attorney also noted that it does not appear that prior art has been cited relative to the limitations in dependent claims 37 – 39 in the Office Action dated November 1, 2007 or in previous Office Actions in this application. Applicants' attorney respectfully submitted that the proposed amendments place claims 1 – 4, 6 – 19 and 27 - 39 in condition for allowance for all the reasons set forth below.

### The 35 U.S.C. 102 or 35 U.S.C. 103 Rejections

Claims 1, 6 – 11 and 19 stand rejected under 35 U.S.C. 102(b) as being anticipated by, or in the alternative, under 35 U.S.C. 103(a) as obvious over Hoffman et al, U.S. Patent No. 5,320,120 (Hoffman). The rejection is respectfully traversed. Claim 1 has been amended.

Claim 1 has been amended to more clearly point out that the filter chamber is provided on an exterior surface of a wash chamber sidewall and comprises a chamber wall and the exterior surface of one of the walls of the wash chamber which each have an interior surface forming a sidewall of the wash chamber and an exterior surface.

#### Standards for anticipation and *prima facie* obviousness.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference." *Verdegaal*

*Bros. V. Union Oil Co. Of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as contained in the ... claim." *Richardson v. Suzuki Motor, Co.*, 868 F.2d 1226, 1236, 9 USPQ2d, 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim." MPEP §2131.

"To establish a *prima facie* case of obviousness, "the examiner must then make a determination whether the claimed invention "as a whole" would have been obvious at that time to that person. Knowledge of applicants disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the "differences" conduct the search and evaluate the "subject matter as a whole" of the invention." See MPEP § 2142, Rev. 6, Sept. 2007. "Obviousness can \* be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so. *In re Kahn*, 441 F.3d 977, 986, 78 USPQ2d, 1329, 1335 (Fed. Cir. 2006) (discussing rationale underlying the motivation-suggestion-teaching \*>test< as a guard against using hindsight in an obviousness analysis)". See MPEP § 2143.01, Rev. 6, Sept. 2007. \*\*\* "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970) (emphasis added). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). See MPEP § 2143.03, Rev. 6, Sept. 2007.

The Examiner stated that "Hoffman discloses a dishwasher having a wash chamber (17), pump (19), spray arm (26), filter chamber in a wall (32), inlet (30), porous filter element (31) which also has the outlet for the fluid to flow back into the wash chamber (col. 3, line 11 – col. 4, line 5. It can be seen that the filter is provided external to the wash chamber ...", Office Action, page 3.

Applicants respectfully submit that Hoffman discloses a dishwasher "... including a box like housing 11 ... [and that] ... housing 11 and door 15 define a wash chamber 17 ..." (emphasis added), Hoffman, col. 2, lines 36 – 68. Further, Hoffman discloses "A filter mechanism 28 is positioned along the junction of the bottom wall 16 and a side wall 29 [of housing 11], which conveniently may be the rear wall opposite the door 15. Conveniently the filter 28 includes an open top 30 adjacent the side wall 29 and a filter element 31 facing the wash chamber 17 and slanted slightly from the vertical", Hoffman, col. 3, lines 38 – 44. Further, referring to Hoffman Figs. 2 and 3 it is clear that filter mechanism 28 is inside wash

chamber 17 formed by housing 11 and door 15. Applicants respectfully submit that the Examiner can not redefine elements of Hoffman to enable the Examiner to apply Hoffman to the elements of claim 1. Specifically, Hoffman specifies that the wash chamber 17 is defined by housing 11 and door 15, and clearly filter 28 is inside the wash chamber as defined by Hoffman.

There is nothing in Hoffman disclosing or suggesting a “... a wash chamber defined by a plurality of walls, each having an interior surface forming a sidewall of the wash chamber and an exterior surface, ... a filter chamber provided on an exterior surface of a wash chamber sidewall for filtering wash liquid being circulated in said wash chamber comprising: a chamber wall and the exterior surface of one of said walls; an inlet opening in said one of said walls, wherein said one of said wall has a non-linear portion for allowing wash liquid being circulated in said wash chamber to enter said filter chamber; an outlet opening in said one of said wall communicating with said filter chamber for allowing was liquid in said filter chamber to return to said wash chamber; and a filter element provided substantially in the plane of said one of said walls at said outlet opening ...” (emphasis added), as now set forth in claim 1.

In sum, Hoffman simply does not disclose or suggest a dishwasher having: 1) walls having an interior surface forming a sidewall of the wash chamber and an exterior surface (applicants recognize that Hoffman does disclose a housing 11 that has walls having an exterior surface, but Hoffman does not disclose or suggest employing the exterior surface of any of the walls as set forth in claim 1); 2) a filter chamber provided on an exterior surface of a wash chamber sidewall comprising a chamber wall and the exterior surface of one of said walls; 3) an inlet opening in said one of said walls communicating with said filter chamber, wherein said one of said walls has a non-linear portion for allowing wash liquid circulated in said wash chamber to enter said filter chamber; 4) an outlet opening in said one of said walls communicating with said filter chamber for allowing wash liquid in said filter chamber to return to said wash chamber; and 5) a filter element provided substantially in the plane of said one of said walls at said outlet opening.

Since each and every element of applicants’ invention as set forth in claim 1 is not supported by the art as set forth above applicants respectfully submit the rejection of claim 1 and claims 6 – 11 and 19 that depend directly or indirectly on claim 1 as being anticipated by Hoffman under 35 U.S.C. 102(b) is defective and should be withdrawn.

Further, applicants respectfully submit that *prima facie* obviousness of applicants' invention "as a whole" is not established since the teachings of Hoffman do not disclose or suggest the claimed invention in claim 1. As noted above all words in a claim must be considered in judging the patentability of that claim against the prior art. Applicants respectfully submit the elements of claim 1 are not disclosed or suggested by Hoffman for all the reasons set forth above. Further as noted above, if an independent claim is unobvious then all dependent claims are unobvious. Accordingly, applicants respectfully submit that the rejection of claim 1 and dependent claims 6 -11 and 19 as being unpatentable over Hoffman under 35 U.S.C. 103(a) is defective for failing to establish *prima facie* obviousness of claims 1, 6 – 11 and 19, and should be withdrawn.

### **The 35 U.S.C. 103 Rejections**

Claims 2 – 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman in view of Price et al, Publication No. US 2003/0213505 A1 (Price). The rejection is respectfully traversed. The standards for judging obviousness are set forth above and repeated with respect to claims 2 – 4.

As set forth above in detail with respect to claim 1 while Hoffman discloses a dishwasher having a filter, there is nothing in Hoffman disclosing or suggesting a "... a wash chamber defined by a plurality of walls, each having an interior surface forming a sidewall of the wash chamber and an exterior surface, ... a filter chamber provided on an exterior surface of a wash chamber sidewall for filtering wash liquid being circulated in said wash chamber comprising: a chamber wall and the exterior surface of one of said walls; an inlet opening in said one of said walls, wherein said one of said wall has a non-linear portion for allowing wash liquid being circulated in said wash chamber to enter said filter chamber; an outlet opening in said one of said wall communicating with said filter chamber for allowing was liquid in said filter chamber to return to said wash chamber; and a filter element provided substantially in the plane of said one of said walls at said outlet opening ...” (emphasis added), as now set forth in claim 1. ” (emphasis added). Accordingly, Hoffman is defective for all the reasons set forth above with respect to claim 1.

As noted by the Examiner, Hoffman does not disclose a wall portion curving into a filter chamber. Further, the Examiner stated that Price discloses a “walls to the chamber curving inwardly”, Office Action, page 4.

Applicants respectfully submit that Price discloses a dishwasher having a washing vessel 213 that includes “... a recirculated wash and/or rinse liquor collection tray, 239, for collecting recirculated wash and/or rinse liquor, 230, an optional filter, 244, for screening food debris, and an inlet port, 238, and an outlet port, 237”, Price, [0056]. See also Fig. 1a. Further, Price discloses that the dishwashing appliance “... can also contain a recirculating cell, 235, for producing electrolyzed, recirculated wash and/or rinse liquor, 260 from recirculated wash and/or rinse liquor, 230 to recirculating cell, 235, a filter, 244, covering the inlet port, 238, of the recirculated wash and/or rinse liquor collection tray, 239 ...”, Price [0058]. Applicants respectfully submit it is clear that Price discloses collection tray 239 extending into the washing vessel 213 that collects and directs recirculated wash and/or rinse liquor 230 into recirculating cell 235. Thus, not only does Price fail to disclose or suggest a filter chamber outside the wash chamber (filter 244 is clearly positioned in the washing vessel 213), but Price fails to disclose or suggest an inlet opening curving into the filter chamber for allowing wash liquid being circulated to enter the filter chamber since Price specifically discloses that collection tray 239 extends into washing vessel 213 “... for collecting recirculated wash and/or rinse liquor ...”, Price [0056].

Applicants respectfully submit that Price fails to disclose or suggest a dishwasher having “... an inlet opening in said one of said walls communicating with said filter chamber, wherein said one of said walls has a non-linear portion for allowing wash liquid being circulated ... to enter said filter chamber ... an outlet opening in said one of said walls communicating with said filter chamber for allowing wash liquid in said filter chamber to return to said wash chamber; a filter element provided substantially in the plane of said one of said walls ...”, as set forth in claim 1 as currently amended; or that the “... inlet opening is formed by a first wall portion above said inlet opening curving into said filter chamber and a second wall portion below said inlet opening generally in the plane of said one of said wall, and said outlet opening is formed in said second wall portion”, as set forth in claim 2; that “... [the] first and second wall portions are formed in said one of said walls”, as set forth in claim 3; or that “... said one of said wall portions has liquid gathering surfaces formed on said at least one of said walls for directing wash liquid flowing down said at least one of said

walls into said inlet opening”, as set forth in claim 4. Accordingly, Price fails to disclose or suggest a dishwasher as set forth in claims 2 - 4.

Accordingly, Price discloses or suggests nothing to cure the deficiencies of Hoffman. Applicants respectfully submit that *prima facie* obviousness of applicants’ invention “as a whole” is not established since the teachings of Hoffman in view of Price do not disclose or suggest the claimed invention in claims 2 – 4 including claim 1 on which claims 2 – 4 depend. Applicants respectfully submit neither Hoffman nor Price disclose or suggest a dishwasher as now set forth in claim 1 upon which claims 2 - 4 depend for the reasons set forth above and further for all the reasons set forth above with respect the rejection of claim 1 under 35 U.S.C. 102(b). As noted above all words in a claim must be considered in judging the patentability of that claim against the prior art. Applicants respectfully submit the elements of claim 1 are not disclosed or suggested by Hoffman for all the reasons set forth above. Further, applicants respectfully submit that the elements of claims 2 – 4 are not disclosed by Hoffman in view of Price for all the reasons set forth above.

Accordingly, applicants respectfully submit that the rejection of claims 2 – 4 as being unpatentable over Hoffman in view of Price under 35 U.S.C. 103(a) is defective for failing to establish *prima facie* obviousness of claims 2 -4, and should be withdrawn.

Claims 16, 17, 27, 31 – 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman in view of Applicants’ specification. The rejection is respectfully traversed. The standards for judging unobviousness are set forth above and repeated with respect to claims 16, 17, 27 and 31 – 39.

The Examiner stated that “Hoffman discloses the apparatus described above in the 102(b) rejection but does not specifically disclose a sump screen, strainer or sensors detecting the liquid level of the filter chamber”, Office Action, page 4. Applicants respectfully point out that applicants’ specification provides “When sump screen 22 is part of a conventional dishwasher filter arrangement, filter 15 can be arranged to be a fine filter to filter finer material [than] the sump screen and filter. Likewise those skilled in the art will recognize that filter 15 can be used alone without any other filter associated with the circulation pump.” Specification [0026]. The Examiner has cited no prior art reference disclosing or suggesting combining a filter chamber outside the wash chamber as set forth in claim 1 with a sump

screen and strainer as set forth in claims 16 and 17 other than applicants' specification. Applicants respectfully submit that the rationale for combining prior art teachings must come from the prior art and not applicants' specification.

Further, the Examiner stated "The specification also describes, "[liquid level] sensors 107, 107' can be optical sensors, turbidity sensors or pressure sensors as are well known in the art ... US Patent 6909743 (applicants believe the Examiner intended US Patent 5, 909,743 cited by applicants in the specification and in the IDS) and US Patent 6103017, each incorporated by reference, disclose the use of pressure sensors to automatically initiate a filter purge cycle in dishwashers." Paragraph [0036]." Office Action page 5. The Examiner has cited no prior art reference disclosing or suggesting combining a filter chamber provided on an exterior surface of a wash chamber sidewall as set forth in claim 27 with sensors for the filter chamber as set forth in claims 27 and 31 – 34 other than applicants' specification. As set forth above, applicants respectfully submit that the rationale for combining prior art teachings must come from the prior art and not applicants' specification.

As set forth above in detail with respect to claim 1 while Hoffman discloses a dishwasher having a filter, there is nothing in Hoffman disclosing or suggesting a "... a wash chamber defined by a plurality of walls, each having an interior surface forming a sidewall of the wash chamber and an exterior surface, ... a filter chamber provided on an exterior surface of a wash chamber sidewall for filtering wash liquid being circulated in said wash chamber comprising: a chamber wall and the exterior surface of one of said walls; an inlet opening in said one of said walls, wherein said one of said wall has a non-linear portion for allowing wash liquid being circulated in said wash chamber to enter said filter chamber; an outlet opening in said one of said wall communicating with said filter chamber for allowing was liquid in said filter chamber to return to said wash chamber; and a filter element provided substantially in the plane of said one of said walls at said outlet opening ..." (emphasis added), as now set forth in claim 1 and 27. Further, there is nothing in Hoffman disclosing or suggesting "... a sump screen for filtering wash liquid flowing to said pump for circulating wash liquid", as set forth in claim 16; or "... [a] sump screen [that] includes a strainer for collecting large particle filtered from said wash liquid by said sump screen", as set forth in claim 17; at least one sensor for sensing the liquid level in said filter chamber and connected to said control for draining wash liquid and material filtered by said filter in said filter chamber in response to sensing wash liquid rising to a predetermined level in said filter

“chamber”, as set forth in claim 27; any of the additional limitations relating to the sensor set forth in claims 31 – 34; or any of the limitations relating to the filter element, control and fill valve, or liquid spray member set forth in claims 35 – 39.

Applicants respectfully submit that the elements of the claimed invention and rationale for combining prior art teachings must come from the prior art and not applicants’ specification. Absent applicants’ specification there is no teaching or suggestion to combine a filter chamber outside the wash chamber as set forth in claim 27 with a sump screen and strainer as set forth in claims 16 and 17. Similarly, absent applicants’ specification there is no teaching or suggestion to combine a filter chamber outside the wash chamber as set forth in claim 27 with sensors as set forth in claims 27 and 31 – 34.

Applicants respectfully note that the Examiner has cited no prior art with respect to the limitations set forth in claims 37 – 39 that are directed to the embodiment disclosed in Fig. 8 of the specification.

Thus, Hoffman is defective for all the reasons set forth above with respect to claims 16, 17, 27, 31 – 39 and further as set forth above with respect to claim 1. Further, Examiner’s reliance on applicants’ specification as a teaching to combine a sump screen, strainer, sensors, control and liquid spray member is defective for all the reasons set forth above.

Accordingly, applicants respectfully submit that the rejection of claims 16, 17, 27 and 31 – 39 as being unpatentable over Hoffman in view of applicants’ specification under 35 U.S.C. 103(a) is defective for failing to establish *prima facie* obviousness of claims 16, 17, 27 and 31 – 39, and should be withdrawn.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman in view of Sargeant U.S. Patent No. 5,743,281 (Sargeant). The rejection is respectfully traversed. The standards for judging unobviousness are set forth above and repeated with respect to claim 18.

Applicants respectfully submit that Hoffman is defective for all the reasons set forth above relative to claim 1 on which claim 18 depends. Applicants acknowledge that drawer dishwashers are known, however, nothing in Hoffman or in Sargeant teaches of suggest combining a filter chamber provided on an exterior surface of a wash chamber sidewall as set

forth in claim 1 with a drawer dishwasher as set forth in claim 18. Further, applicants respectfully submit that claim 1 is nonobvious for all the reasons set forth above, and accordingly, dependent claim 18 is nonobvious.

Accordingly, applicants respectfully submit that the rejection of claim 18 as being unpatentable over Hoffman in view of Sargeant under 35 U.S.C. 103(a) is defective for failing to establish *prima facie* obviousness of claim 18 and should be withdrawn.

Claims 28 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman and applicants' specification as applied to claims 16, 17, 27 and 31 – 39 above, and further in view of Thies et al, US Patent No. 5,909,743 (Thies). The rejection is respectfully traversed. The standards for judging unobviousness are set forth above and repeated with respect to claims 28 and 30.

The Examiner stated that "... it would have been obvious to one of ordinary skill in the art to modify Hoffman and applicants' spec. with the pump arrangement shown by Thies ...". Office Action, pages 5 – 6.

As set forth above in detail, Hoffman fails to disclose or suggest a dishwasher having a filter chamber provided on an exterior surface of a wash chamber sidewall as set forth in claim 27 on which claims 28 and 30 depend. Further, as set forth above in detail, prior art teachings, not applicants' disclosure must be the basis for establishing obviousness. Accordingly, applicants' specification can not be relied on to modify Hoffman. Similarly, Thies fails to disclose or suggest a dishwasher having a filter chamber provided on an exterior surface of a wash chamber sidewall as set forth in claim 27 and accordingly fails to remedy any of the deficiencies of Hoffman. Specifically, neither Hoffman nor Thies discloses or suggests "... wherein said at least one pump for draining wash liquid comprises a first drain pump connected to said wash chamber drain and a second drain pump connected to said filter chamber outlet, and said control selectively operates said first drain pump for draining said wash chamber and selectively operates said second drain pump for draining said filter chamber, as set forth in claim 30. Further, applicants respectfully submit that claim 27 is nonobvious for all the reasons set forth above, and accordingly, dependent claims 28 and 30 are nonobvious.

Accordingly, applicants respectfully submit that the rejection of claims 28 and 30 as being unpatentable over Hoffman and applicants' specification in view of Thies under 35 U.S.C. 103(a) is defective for failing to establish *prima facie* obviousness of claims 28 and 30 and should be withdrawn.

Claims 13 – 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman in view of Thies et al US Patent No. 5,909,743 (Thies). The rejection is respectively traversed. The standards for judging unobviousness are set forth above and repeated with respect to claims 13 – 15.

The Examiner stated “Thies discloses a pump for the filter chamber (54) along with a pump for draining the washing chamber (34). At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify Hoffman with the pump arrangement shown by Thies for the benefit of a flow control of the filtered material”, Office Action, page 6.

Applicants respectfully submit that Hoffman is defective for all the reasons set forth above relative to claim 1 on which claims 13 – 15 indirectly depend. Thies fails to suggest or disclose a filter chamber outside the wash chamber arrangement as set forth in claim 1 and accordingly fails to cure any of the deficiencies of Hoffman with respect to claim 1. Thies discloses “... drain pump 54 is separate from wash pump 28, the purging of soils from the soil accumulator 50 ... can be accomplished while wash pump impeller 32 continues to recirculate wash liquid ...”, col. 5, lines 61 – 65; and that “... drain pump 54 can drain the sump region 18 by drawing wash liquid through drain port 62”, col. 6, lines 28 – 30. Thus, Thies discloses a single drain pump 54 similar to Hoffman. Applicant respectfully submits that Thies and Hoffman fail to disclose or suggest any of the limitations relating to the drain pump set forth in claims 13 – 15.

Accordingly, Hoffman and Thies fail to suggest or disclose all the elements set forth in claims 13 – 15 in addition to failing to disclose or suggest the filter chamber provided on an exterior surface of a wash chamber set forth in claim 1. Further, applicants respectfully submit that claim 1 is nonobvious for all the reasons set forth above, and accordingly, dependent claims 13 – 15 are nonobvious.

Accordingly, applicants respectfully submit that the rejection of claims 13 – 15 as being unpatentable over Hoffman in view of Thies under 35 U.S.C. 103(a) is defective for failing to establish *prima facie* obviousness of claims 13 – 15 and should be withdrawn.

This after-final amendment does not raise new issues that would require further consideration and/or search, since the proposed amendments incorporate structural limitations in response to the Examiner's comments in the Response to Arguments and the structure defined by these limitations has been previously argued by applicants; does not raise the issue of new matter, since the proposed amendments have support in the originally filed application including the specification, claims and drawings; does place the application in better form for appeal by materially reducing and/or simplifying the issues for appeal; and/or does not present additional claims without canceling a corresponding number of finally rejected claims.

It is respectfully submitted that claims 1 – 4, 6 – 11, 13 – 19, 27 – 28 and 30 – 39 are allowable over the prior art of record. Claims 12 and 29 have been rewritten in independent form including all the limitations of the base claim and any intervening claims, and are now believed to be allowable as indicated by the Examiner. Early notification of allowability of claims 1 – 4, 6 – 19 and 27 – 39 is respectfully requested.

Respectfully submitted,

/Robert L. Judd/

Dated: December 19, 2007

\_\_\_\_\_  
Robert L. Judd, Registration No. 25,172  
Telephone (269) 923-5470

WHIRLPOOL PATENTS COMPANY  
500 Renaissance Drive – Ste. 102 MD750  
St. Joseph, Michigan 49085

CERTIFICATE OF MAILING/TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this correspondence is, on the date shown below, being:

deposited with the United States Postal Service  
with sufficient postage as first class mail, in an envelope  
addressed to the Commissioner for Patents,  
Alexandria, VA, 22313-1450.

transmitted by EFS to the Patent and Trademark Office.

/Deborah A. Tomaszewski/  
Signature

Date: \_\_\_\_\_ December 19, 2007 \_\_\_\_\_

Deborah A. Tomaszewski  
(type or print name of person certifying)